

1 BILL NO. A-80-08-01

2 APPROPRIATION ORDINANCE NO. A-18-80

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4 AN ORDINANCE ~~appropriating~~^{TRANSFERRING} additional
5 funds to Account No. 4-02-010-009-4530
6 in the 1980 budget of the Law Depart-
ment for the purpose of concluding settle-
ment of a claim in the amount of \$7,000.00.

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8 WHEREAS, it is desirable to appropriate an additional
9 amount to Account No. 4-02-010-009-4530 in the 1980 budget of
10 the Law Department with which to conclude settlement of a claim
11 by William David Tanner against the former Mayor of the City,
12 which claim is now the subject of a lawsuit pending in the U.S.
13 District Court, Fort Wayne Division;

14 WHEREAS, there exists an unobligated balance of
15 \$4,000.00 in Account No. 4-02-010-009-4111 in the 1980 budget
16 of the Law Department which is available to provide part payment
17 of said settlement amount;

18 WHEREAS, there is an unappropriated balance in the
19 Refunds, Awards & Indemnities Account of the City Controller's
20 Office to pay the balance of said settlement amount.

21 WHEREAS, the City Attorney has recommended such settle-
22 ment and the City Controller has recommended the following
23 transfer and additional appropriation.

24 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL
25 OF THE CITY OF FORT WAYNE, INDIANA:

26 SECTION 1. That the sum of \$4,000.00 is hereby trans-
27 ferred from Account No. 4-02-010-009-4111 in the 1980 budget of
28 the Law Department and appropriated to Account No. 4-02-010-009-
29 4530 in the 1980 budget of the Law Department.

30 SECTION 2. That the unappropriated and unobligated
31 balance of Account No. 4-02-010-009-4111 in the 1980 budget of
32 the Law Department is hereby reduced by the amount of \$4,000.00.

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3 SECTION 3. That this ordinance shall be effective
4 upon passage and approval by the Mayor.

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10 APPROVED AS TO FORM AND
11 LEGALITY AUGUST 12, 1980.

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John E. Hoffman
JOHN E. HOFFMAN
City Attorney

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Mark P. G. Smith
COUNCILMAN

Public hearing set for Tuesday, the _____ day of _____,
1980, at _____ o'clock _____ A.M., in the Council Chambers.

CHARLES W. WESTERMAN, CLERK

Read the first time in full and on motion by Gia Quinta,
seconded by Jalunes, and duly adopted, read the second time
by title and referred to the Committee Planning (and the City
Plan Commission for recommendation) and Public Hearing to be held after
due legal notice, at the Council Chambers, City-County Building, Fort Wayne,
Indiana, on 19, the 19 day of August, at 10:00 o'clock M., E.S.T.

DATE: 8/12/80

Charles W. Westerman Jr.
CHARLES W. WESTERMAN
CITY CLERK

Read the third time in full and on motion by Gia Quinta,
seconded by Jalunes, and duly adopted, placed on its
passage. PASSED (LOST) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
<u>TOTAL VOTES</u>	<u>7</u>	<u>2</u>			
<u>BURNS</u>		<u>X</u>			
<u>EISBART</u>	<u>X</u>				
<u>GiaQUINTA</u>	<u>X</u>				
<u>NUCKOLS</u>	<u>X</u>				
<u>SCHMIDT, D.</u>		<u>X</u>			
<u>SCHMIDT, V.</u>	<u>X</u>				
<u>SCHOMBURG</u>	<u>X</u>				
<u>STIER</u>	<u>X</u>				
<u>TALARICO</u>	<u>X</u>				

DATE: 8/26/80

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL)
(APPROPRIATION) ORDINANCE (RESOLUTION) No. A-18-80
on the 26th day of August, 1980.

ATTEST:

(SEAL)

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Vivian G. Schmidt
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the 27th day of August, 1980, at the hour of
11:30 o'clock A. M., E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 29th day of August
1980, at the hour of 11:30 o'clock A. M., E.S.T.

Winfield C. Moses Jr.
WINFIELD C. MOSES, JR.
MAYOR

BILL NO. A-80-08-01

REPORT OF THE COMMITTEE ON FINANCE

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS REFERRED AN
ORDINANCE transferring additional funds to Account No. 4-02-010-009-4530
in the 1980 budget of the Law Department for the purpose of concluding
settlement of a claim in the amount of \$7,000.00

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE DO PASS.

JAMES S. STIER, CHAIRMAN

James S. Stier

MARK GIAQUINTA, VICE CHAIRMAN

Mark E. GiaQuinta

BEN EISBART

Ben Eisbart

PAUL M. BURNS

Paul M. Burns

DONALD J. SCHMIDT

8-26-80
CONCURRED IN
DATE CHARLES W. WESTERMAN, CITY CLERK

MUTUAL RELEASE AND SETTLEMENT OF CLAIM

WHEREAS, William David Tanner was a participant in the Comprehensive Employment and Training Act (CETA) program administered by the Fort Wayne Area Consortium during the calendar year of 1976, and

WHEREAS, William David Tanner, prior to May 17, 1976, while such a participant, was a public service employee at a job site under the Board of Works of the Civil City of Fort Wayne with specific duties involving the development and implementation of a cable television ordinance, and

WHEREAS, William David Tanner, subsequent to May 17, 1976, was not re-assigned to another CETA job site until October of 1976, and

WHEREAS, William David Tanner sought legal remedies for the alleged loss of income and other alleged injuries by means of invoking administrative law procedures within the Department of Labor and by filing suit in United States District Court for the Northern District of Indiana, and

WHEREAS, the Civil City of Fort Wayne is the majority participant in the Fort Wayne Area Consortium and was named as a defendant in the administrative law proceedings along with the Fort Wayne Area Consortium, and

WHEREAS, Robert E. Armstrong, former Mayor of the Civil City of Fort Wayne was named as a defendant in the federal court action, and

WHEREAS, all of the parties involved desire to settle all claims and release all other parties from liability, therefore

it is agreed as follows:

1. For the sole consideration of Seven Thousand Dollars (\$7,000.00) and the other considerations herein, William David Tanner, his agents, successors, assigns and legal representatives, residing at 713 Edgewater Avenue, Fort Wayne, Indiana does hereby release, acquit and forever discharge the Fort Wayne Area Consortium, the Civil City of Fort Wayne and Robert E. Armstrong, any of their agents, successors, assigns and legal representatives from any and all actions, causes of action, claims, demands, damages, costs, loss of service, expenses and compensation on account of or in any way growing out of or arising out of any and all known and unknown damages resulting or which may result from the facts, circumstances, and occurrences in which William David Tanner was terminated and failed to be re-assigned to any other participation in the CETA program and in which William David Tanner and his business reputation were discussed and commented upon either by written word or verbally by Robert E. Armstrong during the period commencing May 17, 1976 through present.

2. For the sole consideration of the considerations herein, the Fort Wayne Area Consortium, the Civil City of Fort Wayne, and Robert E. Armstrong, their agents, successors, assigns and legal representatives do hereby release and forever discharge William David Tanner, any of his agents, successors, assigns, and legal representatives from any and all actions, causes of action, claims, demands, damages, costs, loss of service, expenses and compensation on account of or in any way growing out of or arising out of any and all known and unknown damages resulting or which may result from the facts, circumstances and occurrences in which William David Tanner was terminated and failed to be re-assigned to any other participation in the CETA program and in which William David Tanner and his business reputation were discussed and commented upon either

by written word or verbally by Robert E. Armstrong during the period commencing May 17, 1976 through present.

3. William David Tanner, the Civil City of Fort Wayne and the Fort Wayne Area Consortium agree to dismiss with prejudice all claims and proceedings now pending before the United States Department of Labor, Office of Administrative Law Judge, designated under 79-CETA-123.

4. William David Tanner and Robert E. Armstrong agree that to dismiss with prejudice all claims and proceedings now pending before the United States District Court for the Northern District of Indiana, Fort Wayne Division, designated under Civil Action Number F-78-66.

5. William David Tanner, the Civil City of Fort Wayne, Fort Wayne Area Consortium and Robert E. Armstrong agree that the exchange of consideration under this mutual release and settlement of claim is for the full and complete compromise and settlement of all claims between the various parties that may arise either directly or indirectly from the termination, failure of reassignment and written and verbal comments involving William David Tanner and his participation in the CETA program from 1975 through present, and that this settlement shall apply to all unknown and unanticipated claims of every nature and description. These parties hereby admit no liability whatsoever and that this release and settlement is made in order to terminate any other controversy.

6. It is acknowledged by the Civil City of Fort Wayne that there are no known facts that indicate that William David Tanner is either civilly or criminally liable for the removal of any materials from the City-County Building on or about May 23, 1976.

7. The Civil City of Fort Wayne and Robert E. Armstrong acknowledge that there are no known facts that indicate that William David Tanner was anything less than competent in performing his duties within his position of cable television co-ordinator.

8. This mutual release and settlement of claim is wholly contingent upon the successful introduction and enactment of the appropriate ordinance before the Common Council of the Civil City of Fort Wayne authorizing the payment and funding of this settlement in the amount of Seven Thousand Dollars (\$7,000.00) and to be paid as soon as possible thereafter. Any failure of such successful introduction and enactment such as to cause the inability or the impossibility of the dispensing of such funds for the settlement of this matter within a reasonable time will render this mutual release and settlement of claim null and void. In the event an ordinance authorizing the payment of this settlement is enacted, but the payment is not made within ten days, the principal sum will bear interest at an annual percentage rate of ten percent until paid in full.

Robert E. Armstrong
ROBERT E. ARMSTRONG

Date: July 18, 1980
CIVIL CITY OF FORT WAYNE

By: Winfield C. Moses, Jr.
Mayor
Date: _____

FORT WAYNE AREA CONSORTIUM

By: Joseph C. Daniel
Executive Director
Date: _____

W.D. Tanner
WILLIAM DAVID TANNER
Date: July 15, 1980

HOFFMAN, MOPPERT & ANGEL

By: John E. Hoffman
John E. Hoffman
Corporate Counsel for
Civil City of Fort Wayne
Date: 7/15/80

KENNERK, DUMAS, BURKE, BACKS
& SALIN, P.C.

By: Robert Owen Vegeler
Robert Owen Vegeler
Special Counsel to Fort Wayne
Area Consortium and
Robert E. Armstrong
Date: July 15, 1980

DANIEL, BEERBOWER, SUMMERS
& RASKOSKY

By: Earl Raskosky
Earl Raskosky, Counsel for
William David Tanner
Date: July 15, 1980

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ROBERT E. ARMSTRONG

Date: _____

CIVIL CITY OF FORT WAYNE

By: Winfield C. Moses, Jr., Mayor

Date: _____

FORT WAYNE AREA CONSORTIUM

By: Joseph C. Daniel
Executive Director

Date: _____

WILLIAM DAVID TANNER

Date: _____

HOFFMAN, MOPPERT & ANGEL

By: John E. Hoffman
Corporate Counsel for
Civil City of Fort Wayne

Date: _____

KENNERK, DUMAS, BURKE, BACKS & SALIN, P.C.

By: Robert Owen Vegeler
Special Counsel for Fort Wayne
Area Consortium and Robert E. Armstrong

Date: _____

DANIEL, BEERBOWER, SUMMERS & RASKOSKY

By: Earl Raskosky
Counsel for William David Tanner

ATTORNEYS

H. HUGH KENNERK
JAMES F. DUMAS
LARRY J. BURKE
VINCENT J. BACKS
WILLIAM N. SALIN
ROBERT OWEN VOGELER
EDWARD C. STAUFFER

KENNERK, DUMAS, BURKE, BACKS & SALIN

A PROFESSIONAL CORPORATION

2120 FORT WAYNE NATIONAL BANK BUILDING
FORT WAYNE, INDIANA 46802

*File
against logon
make 1 " to file with the
judge otherwise
copy*

219-743-0171

July 16, 1980

John E. Hoffman, Esquire
1212 Anthony Wayne Bank Building
Fort Wayne, Indiana 46802

Re: Tanner v. Armstrong and Tanner v. City of
Fort Wayne and Fort Wayne Area Consortium

Dear Mr. Hoffman:

I have been involved in the above legal controversies since 1977. Both of these controversies are related in that they arise from the interaction of the former mayor of Fort Wayne, the City and the Consortium with David Tanner in his capacity as cable TV coordinator.

Initially, Mr. Tanner pursued the administrative law remedies for his alleged wrongful termination and failure of reassignment as early as the middle of 1976. The administrative procedure involved a hearing before a grievance panel and subsequent affirmation of the panel's findings by the regional administrator of the Employment and Training Administration. Counsel for the Employment and Training Administration has been in constant contact with myself or other counsel involved upon behalf of the City and the Consortium. Presently, a full evidentiary hearing before an Administrative Law Judge is scheduled. The decision of the Administrative Law Judge is appealable by either party to United States Circuit Court for the Seventh Circuit in Chicago. Any determination adverse to the City of Fort Wayne and/or the Consortium would involve a significant monetary contribution by the City to satisfy such determination. Mr. Tanner had sought damages for lost wages in the amount of \$3,560.00, interest and attorney's fees. Whether or not Mr. Tanner would prevail before the Administrative Law Judge on any of his claims and receive his request for damages is, of course, unknown. However, it appears that there is a significant probability that the City and/or Consortium would face some amount of liability.

Secondly, Mr. Tanner initiated Federal District Court proceedings against the former mayor, Robert E. Armstrong, in order to recover damages for the alleged violation of due process rights and for libel and slander. All of these allegations are

vehemently denied by Mr. Armstrong and the case is now set for trial before a Federal magistrate. Again, there appears to be a possibility of liability upon behalf of the Defendant, but the extent of damages is speculative. Nevertheless, the amount of resources to be spent not only by counsel for the Defendant but also in terms of inconvenience and lost time of the many witnesses to be called would be significant. As was set forth in the Pre-Trial Order filed with the court, a list of proposed witnesses included many present and past members of city government and other citizens of this county.

After having worked on both of these legal controversies for several years, I have reached one conclusion. Unhesitatingly, I believe that the proposed settlement, which favors all parties to these controversies, is just, fair and makes good business sense. Having worked under your guidance in these matters, I believe that we have developed a settlement posture that not only saves money for the taxpayers, but also sets an example for the appropriate handling of similar controversies in the future.

Respectfully,


Robert Owen Vegeler

ROV/eb

DANIEL, BEERBOWER, SUMMERS & RASKOSKY

ATTORNEYS AT LAW

SUITE 125 2200 LAKE AVENUE

FORT WAYNE, INDIANA 46805

STEPHEN C. DANIEL
DOUGLAS O. BEERBOWER
ROGER C. SUMMERS
EARL RASKOSKY
JOE SHULL

TELEPHONE
(219) 423-9592

July 11, 1980

Mr. John E. Hoffman
Attorney at Law
1212 Anthony Wayne Bank Building
Fort Wayne, Indiana 46802

RE: DAVID TANNER V. ARMSTRONG

Dear Mr. Hoffman:

This letter is in regard to the basis for the settlement of this case. Our action seeks a recovery of lost wages in an amount which totals approximately \$20,000.00 plus punitive damages for a blatant denial of due process and compensatory damages for defamation. To these demands are added a prayer for reimbursement for expenses and payment of attorney fees. Valuing these claims at a total of \$50,000.00 for successful litigation is modest and conservative in my estimation.

In making an offer concerning settlement, we reduced our case to one claim, the denial of due process. As you know, when a person has a liberty or property interest, the U.S. Constitution requires a hearing before that liberty or property interest can be terminated. David Tanner was denied both liberty and property prior to a hearing - a clear denial of his inalienable rights. Since the usual remedy is to reimburse the citizen for the property he lost (in this case, wages), David Tanner is entitled to \$3,560.00. To this should be added interest, which, when computed at 8% would total more than \$1,000.00.

In a case such as this one, David Tanner is entitled to recover his costs and to be reimbursed for his attorney fees. These amounts would be recoverable for all practical purposes as a matter of course. To date I have expended 120 hours in the handling of this case. If we multiply these hours by \$50.00, which we both know is probably the lowest rate available in this city, the recoverable attorney fees should be \$6,000.00. (My research shows that district courts are now being found to have abused their discretion by reducing hourly rates in these types of cases to \$30.00 per hour.) In light of these facts, your offer of \$7,000.00 falls short of the expected recovery on only one of the four Counts of the Complaint and does not begin to approach the total ultimate liability.

Very truly yours,

DANIEL, BEERBOWER, SUMMERS & RASKOSKY



Earl Raskosky

ER/do

DIGEST SHEET

TITLE OF ORDINANCE: Appropriation

A-80-08-01

DEPARTMENT REQUESTING ORDINANCE: Law Department

SYNOPSIS OF ORDINANCE: An ordinance appropriating additional funds to Account

No. 4-02-010-009-4530 in the 1980 budget of the Law Department for the purpose of concluding settlement of a claim in the amount of \$7,000.00.

EFFECT OF PASSAGE: Claim will be settled and suit dismissed

EFFECT OF NON-PASSAGE: Claim and suit will be determined by trial by the court.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS): \$7,000.00.

(\$4,000.00 from the Law Department 1980 budget)

ASSIGNED TO COMMITTEE: